

To: Town of Zionsville, IN
From: Patrick and Katie Miller, 4317 Sedge Ct., Zionsville, IN 46077
Date: 01/10/2022
RE: Appeal to Easement Encroachment Denial

I am writing to respectfully request that the denial from December 6th, 2021 to our request for an easement encroachment at our home located at 4317 Sedge Ct. be reversed. We are requesting that you overturn the denial which would allow the cement of our proposed pool to encroach on the easement by a few feet (note that the actual structure of the pool would not be in the easement). We would greatly appreciate you exercising your discretion and approving our request due to (i) the minor amount of the pool cement that will encroach; (ii) the fact that the pipe in question is actually more than 25 feet from where the pool cement would encroach; and (iii) that the encroachment is only based on a non-permanent structure and not a permanent structure.

Our application to encroach the easement by a few feet was denied by the Town Stormwater representative on the following basis: “Given the presence of storm sewer line, we do not recommend acknowledging the encroachments.” The other three parties asked to assess the encroachment all approved, stating:

“As there are no existing or planned sanitary sewers within the easement areas, wastewater does not object to acknowledging the easement encroachment as presented.”

-Mindy Klinedinst, Town of Zionsville Wastewater

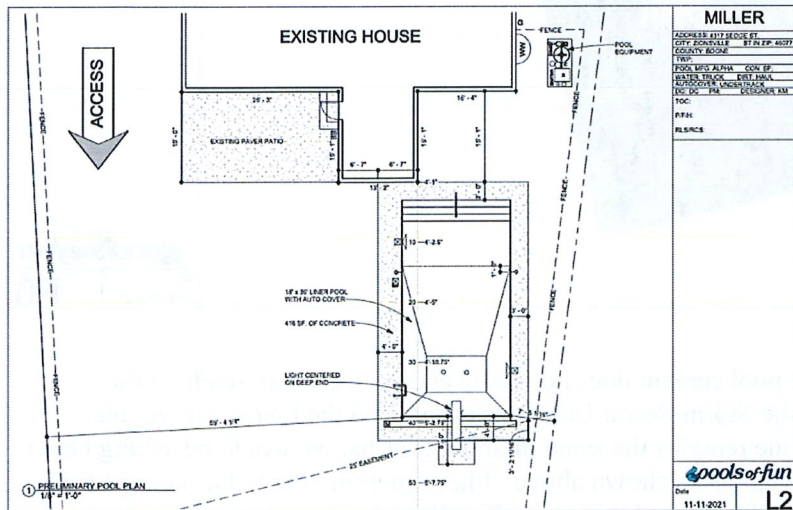
“The Surveyor’s Office has no legal drains or easements on this property.”

-Jason Schuetz, Boone County Surveyor's Office

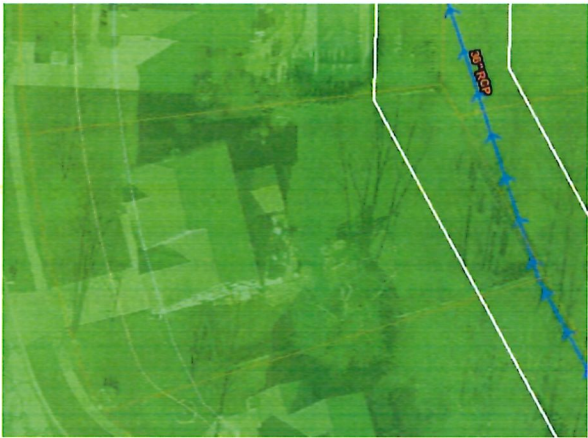
“Not in TriCo service territory.”

-Ryan Hartman, TriCo Regional Sewer Utility

After having other pool layouts drawn on our property we have concluded that the best possible layout for the pool would be our original design which would encroach on the easement. We cannot move it to the southside of the yard because we have a beautiful Black Walnut tree which we would like to keep healthy and alive. The layout below would give us the best possible use of our yard for our children and our dogs to play freely as well as any future owners of our property.



After thinking about this, and seeing the original satellite image provided to us by Owen Young from your office:



We had the CAD designer from the pool company mock something up, to show just how much the pool would encroach on the easement, and the distance it would be from the storm sewer line which you can see is more than 25 feet from the easement line in the area where the pool cement would encroach.



As you can see from this mockup, the pool cement does not really encroach all that much on the easement. Furthermore, you can see the Storm Sewer Line runs away from the house, but yet the easement distance from the property line remains the same of 25 feet. What we would be asking here is just for a little discretion to allow the cement as shown above. I have measured how far the pipe runs from where we want the edge of the pool to be and it is more than 40 feet.

If you also look at the original pool plans you can see that the permanent structure of the pool does not encroach on the easement. The only part hanging over the easement line would be the cement and this would and can be easily replaced if there is ever an issue since it is not a part of the permanent structure of the pool.

I did identify in Chapter 4 Section A Paragraph 6 in the **STORMWATER TECHNICAL STANDARDS MANUAL TOWN OF ZIONSVILLE, INDIANA**

5. *Pipe, 12 inches or larger in diameter, shall be placed in a 30-foot easement (15 feet from centerline on each side) and shall be designated on the record plat as 30-foot drain easement. Wider easements may be required by the Town when the depth of pipe is greater than 6 to 10 feet, depending on the pipe size.*

Given this information and the additional comments provided above, we believe and respectfully request that it is reasonable to exercise discretion to allow our minor encroachment consisting of pool cement.

We would be happy to discuss in more detail at your convenience. We look forward to your response and helping our family achieve our ideal updated backyard!

Patrick and Katie Miller

4317 Sedge Ct.

Zionsville, IN 46077

Patrick: 574-315-0680

Katie: 765-404-1371

Amy Lacy

From: Daniel Neuhausel
Sent: Monday, December 6, 2021 10:13 AM
To: pjmillier1818@gmail.com
Cc: Bobby Knox; Danny Stogsdill; Jason Schuetz (jschuetz@co.boone.in.us); Michael Susong; Mindy Klinedinst; Ryan Hartman; Zach Lutz
Subject: Encroach (Easement) - 4317 SEDGE COURT - (ACT-2021-91)
Attachments: Obstruction of Recorded Easement Procedures.pdf

Mr. Miller,

Unfortunately, after review by appropriate Town staff, your Encroachment Agreement application has been **DENIED**. Staff responses are below, and they are also copied on this email should you have questions regarding their responses.

RESPONSES:

"Given the presence of storm sewer line, we do not recommend acknowledging the encroachments. Also, based on staff observations when they recently visited the property there appears as if a fence exists within the easement on this property."

-Michael Susong P.E., Town of Zionsville Stormwater

"As there are no existing or planned sanitary sewers within the easement areas, wastewater does not object to acknowledging the easement encroachment as presented."

-Mindy Klinedinst, Town of Zionsville Wastewater

"The Surveyor's Office has no legal drains or easements on this property."

-Jason Schuetz, Boone County Surveyor's Office

"Not in TriCo service territory."

-Ryan Hartman, TriCo Regional Sewer Utility

If you wish to appeal Staffs decision you will need to:

1. Compile a memo & supporting documentation on why the Staff's determination should be overturned with any supporting documents you wish to bring before the Town Council; and
2. Submit this documentation to **Amy Lacy, Municipal Relations Coordinator** [(317)733-2277; alacy@zionsville-in.gov] on or before the Monday prior to the meeting date you wish to be heard to get on the agenda.
3. Coordinate with the Ms. Lacy with regards to Town Council submittal, attendance, presentation, etc.

DISCLAIMER: *These types of agreements are reviewed on a case by case basis by Staff. Submitting does not guarantee approval and/or current configuration of encroachment. Conditions may be applied by Staff upon review. The agreement is just with the Town of Zionsville. This agreement does not apply to any other utility/jurisdictional authorities that may have a current/future interest in utilizing the easement/ROW (as is their right), applicant will need to approach other utilities/jurisdictional authorities that may have an interest in the easement/ROW to secure possible other separate agreements.*

Any questions or concerns, please feel free to respond here or call direct. Our office is open Monday-Friday between the hours of 8am-4pm, excluding holidays.

INFO:

Address: 4317 SEDGE COURT
Owner: MILLER KATIE J & PATRICK J
Easement: Location of [Pool] in a Recorded [Drainage, & Utility Easement].

Applicant: Patrick Miller
Company: N/A
Address: 4317 SEDGE COURT
Phone #: 574-315-0680
E-mail: pjmiller1818@gmail.com

Subdivision: THE PRESERVE AT SPRING KNOLL SEC 2
Parcel ID: 06-08-27-000-006.049-006
Zoning: § 194.047 URBAN R-SF-2: SINGLE-FAMILY RESIDENTIAL DISTRICT.

Dan Neuhausel
Planner I – Zoning
Town of Zionsville

O: (317) 344-1163
dneuhausel@zionsville-in.gov
www.zionsville-in.gov





Town of Zionsville, Indiana

1100 West Oak Street, Zionsville, Indiana 46077

Application for Encroachment

[Easements]

1. SITE INFORMATION: ☐ Rural [Blue] ☒ Urban [Kaki]

Address of Property: 4317 SEDGE CT. ZIONSVILLE, IN 46077	
Subdivision/Development: The preserve at Spring Knoll	Lot/Suite Number: 197
State Parcel Number: 019033197	Zoning: R-5F-2 - Urban

2. APPLICANT (BUILDER-CONTRACTOR)

3. PROPERTY OWNER

Contact Name:	Contact Name: PATRICK MILLER
Company:	Company:
Address:	Address: 4317 SEDGE CT.
Phone:	Phone: (574) 315-0680
E-mail:	E-mail: pjmillar BFB@gmail.com
<input type="checkbox"/> IF Different from Owner, Fill out Owner Authorization Form	

4. ENCROACHMENT INFORMATION

a. Describe Proposed Encroachment: New pool build with portion of cement surround encroaching on easement.	
b. Location: <input type="checkbox"/> Right-of-Way <input type="checkbox"/> Air Rights <input checked="" type="checkbox"/> Easement	
c. Type: <input type="checkbox"/> Sign <input type="checkbox"/> Landscaping <input type="checkbox"/> Fence <input type="checkbox"/> Tree <input type="checkbox"/> Deck <input checked="" type="checkbox"/> OTHER: Pool	
Estimated Cost:	

5. ADDITIONAL INFORMATION:

<input checked="" type="checkbox"/> Encroachment Agreement	For Recordation. Applicant should fill out and sign provided document.	8 1/2 x 14 Agreement Provided? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Site Plan	Drawing should be to scale with north arrow. It should indicate all easements and easement line(s) & all right-of-way and right-of-way line(s). The drawing should show the encroachment(s) and all necessary dimensions relating to the encroachment(s).	8 1/2 x 11 min. Site Plan Provided? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input checked="" type="checkbox"/> Exhibit A	A copy of the deed or a legal description of the property will be required. In addition, the date the deed was recorded, instrument number, etc.	Deed/Legal Provided? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The undersigned hereby certifies that they have the authority to make the above application, that the above information is true and correct, changes requested by this application are in conformance with all laws of the State of Indiana and Ordinances of the Town of Zionsville, that the Homeowners Association [if applicable] has been noticed, and that the encroachment will not be installed until proper certificates of completion and compliance are filed with the Department of Planning & Economic Development, Town of Zionsville, Indiana.

Signature of Applicant: Katie J. Miller
Print: Katie J. Miller

Date: 11/30/2021

TOWN OF ZIONSVILLE
CONSENT TO ENCROACHMENT AND ENCROACHMENT AGREEMENT
Obstruction of Recorded Easement

THIS CONSENT TO ENCROACHMENT AND ENCROACHMENT AGREEMENT ("Encroachment Agreement") is made and entered into effective the 1 day of DECEMBER, 2021, by and between the TOWN OF ZIONSVILLE, INDIANA, a municipal corporation (hereinafter called "Town" or "Zionsville") and Katie J. Miller (hereinafter called "Land Owner" or "Owner"), WITNESSETH THAT:

WHEREAS, Land Owner is the owner of certain real estate located in the Zoning District of the Town of Zionsville, having the common address of Address 4317 Sedge Ct., Zionsville, Indiana, (hereinafter the "Real Estate"), which is more particularly described in the legal description Exhibit "A" attached hereto; and

WHEREAS, the Town is the owner of a recorded and platted drainage and/or utility easement located within the Real Estate; and

WHEREAS, the Land Owner applied to the Zionsville Building Commissioner for approval of an installation of a fence/structure/landscaping/etc. located upon the Real Estate (hereinafter "the Encroachment"), which will hang over/be located within described easement and, therefore, encroach over, above, and upon the airway, easement owned by the Town ; and

WHEREAS, the Zionsville Building Commissioner approved the requested Encroachment based on the Land Owners voluntary agreement to enter into this Encroachment Agreement and indemnify and hold the Town harmless as hereinafter provided;

NOW, THEREFORE, in consideration of the Town's approval of the requested installation and for and in consideration of the covenants and agreements hereinafter contained and set forth, the sufficiency of which is hereby acknowledged, the Town and the Owner now promise, covenant, and agree as follows:

1. The Town hereby consents to the Encroachment to be located over, above, and/or upon the Town's easement as an installation located on the Real Estate.
2. It is mutually understood and agreed that consent to the Encroachment does not create in the Land Owner or his successors and assigns any right, title, or interest in and to that portion of the easement owned by the Town upon which said Encroachment is or may hereafter be over, above, and/or located upon, and the Land Owner hereby specifically waives any right, title, and interest in and to that portion of the real estate owned by the Town within the boundaries of said existing easement for the Real Estate which the Owner might heretofore have acquired, or might hereafter acquire by any means of adverse possession.
3. In consideration of the Town's consent to the Encroachment in the Real Estate easement, the Owner does hereby certify, acknowledge, and affirm that the Town of Zionsville, Indiana, shall not be responsible or liable for any loss occasioned by the removal, alteration, or destruction (in whole or in part) of the installation Encroachment over, above, and/or located upon or within the easement for the Real Estate, whether during the lawful exercise of the Town's right and duties in regard to the maintenance, repair, or improvements to said easement or on other occasions and whether caused in whole or in part by the negligence of the Town or its employees, agents, contractors, or representatives. The Town and its employees, agents, contractors, officials, and

other representatives are hereby released from financial responsibility for any and all losses the Owner incurs arising out of, related to, or associated with the Encroachment.

4. Land Owner and successors and assigns and successor owners in interest shall indemnify the Town of Zionsville, Indiana, and hold the Town harmless from any and all liability, damages, expenses, and costs, including reasonable attorney fees, arising out of or related to damages to property or injury to persons, including death, which result from, relate to, or arise in connection with the Encroachment within the easement for the Real Estate. In the event it becomes necessary for the Town of Zionsville to enforce this indemnification and hold harmless provision, the Owner shall pay all reasonable costs the Town incurs in the enforcement thereof and in the enforcement of this Encroachment Agreement, including reasonable attorney fees. The Owner and successors and assigns and successor owners in interest to the Real Estate shall have an affirmative duty to inform all third parties with whom each negotiates for a possible sale, lease, assignment, mortgage, or transfer of the Real Estate of the existence of this Encroachment Agreement and the obligations hereunder.

5. In the event the Owner or successors and assigns or a successor owner in interest to the Real Estate breaches this Encroachment Agreement, in addition to all other legal and equitable rights and remedies the Town may have, the Owner hereby covenants and agrees that the consent granted to encroach may be revoked at any time thereafter upon the Town giving at least ninety (90) days prior written notice of termination of the Encroachment. Upon receipt of such notice, the Owner shall remove the Encroachment at his sole cost and expense prior to the termination date. Should he or his successors and assigns fail to timely remove the Encroachment, the Town may do so and is hereby released from any and all liability resulting from or associated with said removal of the Encroachment and from any diminution in the value of the Real Estate as a result thereof. All costs and expenses incurred to effectuate said removal, including related employee and court costs and attorney fees, shall be promptly reimbursed by the Owner to the Town within ten (10) days of being invoiced.

6. All notices, requests, and demands hereunder shall be in writing and shall be deemed to have been sufficiently given or served when presented personally, when delivered to an overnight courier service with guaranteed next business day delivery or, if deposited in the U.S. Mail, postage prepaid, certified or registered, addressed to the appropriate party at the address set forth below following the signatures of the parties hereto. Such notices, requests, and/or demands shall be effective upon the actual receipt thereof or, in the case of U.S. Mail, on the third calendar day after mailing. Either party may change its address as set forth herein by notice given to the other party as herein provided.

7. The covenants and agreements herein contained and set forth shall be construed as covenants and agreements running with the title to the above-described parcel of real estate and easement, and shall be binding upon the parties hereto, their respective heirs, devisees, legal representatives, and assigns, and upon any person or entity acquiring an interest in the Real Estate.

8. Wayne DeLong as Building Commissioner for the Town of Zionsville, states that he is duly empowered to execute this Consent to Encroachment and Encroachment Agreement for and on behalf of the Town of Zionsville, Indiana.

IN WITNESS WHEREOF, the parties have hereunto executed this Consent to Encroachment and Encroachment Agreement, effective the day and year first above written.

TOWN OF ZIONSVILLE, INDIANA

By: _____

Printed: Wayne DeLong

Not personally, but in his capacity as

Building Commissioner for the Town of Zionsville.

Address:

Zionsville Town Hall

Attention: Wayne DeLong

1100 West Oak Street

Zionsville, Indiana 46077

Land Owner: PATRICK MILLER

By: [Signature]

Printed: PATRICK J. MILLER

Title: _____

Physical Address:

4317 SEDGECR.
ZIONS VILLE, IN 46077

Mailing Address:

4317 SEDGECR CT.
ZIONSVILLE, IN 46077

STATE OF INDIANA)
)SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared Wayne DeLong for and on behalf of the Town of Zionsville, Indiana, as the Building Commissioner of the Town of Zionsville, Indiana, who acknowledged the execution of the foregoing Consent to Encroachment and Encroachment Agreement.

WITNESS my hand and Notarial Seal this

_____ day of _____,

Signature _____

Printed: Christine I. Koenig

My Commission Expires: 6 / 14 / 2022

My Commission Number: 654176

Residing in BOONE County, INDIANA

STATE OF INDIANA)
)SS:
COUNTY OF BOONE)

Before me, a Notary Public in and for said County and State, personally appeared Patrick Miller who acknowledged the execution of the foregoing Consent to Encroachment and Encroachment Agreement and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this

1st day of December, 2021

Signature _____

Printed: Amelia Anne Lacy

My Commission Expires: 09/06/2028

My Commission Number: NP0638253

Residing in Boone County, IN

SEAL:

SEAL:



AMELIA ANNE LACY
Notary Public, State of Indiana
Boone County
Commission Number NP0638253
My Commission Expires
September 6, 2028

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.
Name: _____ Signature: _____

Instrument prepared by: Name: _____

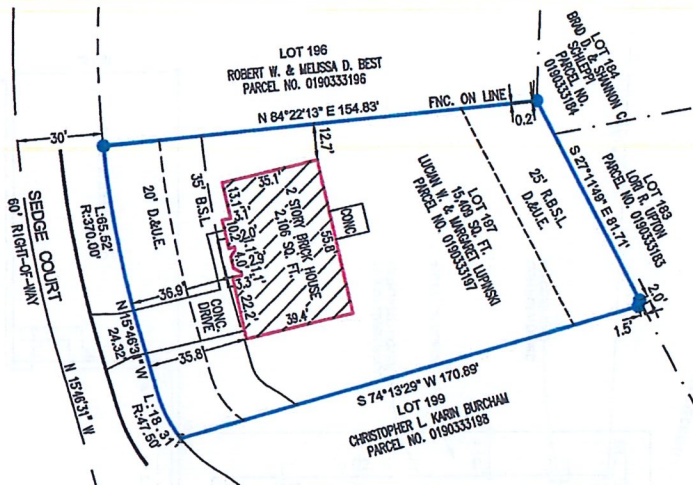
Signature: _____

SEA Group
Land Surveyors
 494 Gradle Drive Phone: 317.844.3333
 Carmel, IN 46032 Fax: 317.844.3383
 www.SEAgroupLLC.com

RETRACEMENT SURVEY

LOT #197 - THE PRESERVE AT SPRING KNOLL - SEC 2

Drawing Prepared By: BS
 Drawing Scale: 1" = 40'
 Drawing Date: 6/6/2017
 Field Work Date: 5/23/2017
 Drawing Prepared For:
 Title Links LLC



CERTIFICATE OF LAND SURVEY

This Land Survey, prepared by SEA Group Land Surveyors, is hereby certified to the following.

To:

This is to certify that this map or plot and the survey on which it is based were executed, performed and prepared under my direct supervision and that to the best of my knowledge, information and belief was gathered in accordance with the current minimum standards for competent practice of land surveying, as established by Rule 12 of Article 1 within Title 865 of the Indiana Administrative Code for the type of survey that has been indicated herein. This certification is made with respect to the real estate described hereon as of the date of last fieldwork and in effect on the date of this certification. The undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of Indiana, the Relative Positional Accuracy of this survey does not exceed that which is specified therein. Field work was completed on May 23, 2017.

Date: May 6, 2017

Brian C. Rasmiller

Brian C. Rasmiller
 Registered Land Surveyor of the State of Indiana
 Registration Number LS20200083



Surveyed Land Description

Lot numbered 197 in the Final Plat of The Preserve at Spring Knoll, Section 2, as per plat thereof, recorded on December 7, 20014 as Instrument No. 0115120 within Plat Book 12, Page 60 in the Boone County Recorder's Office of the State of Indiana.

DRAWING LEGEND

D = Drainage U = Utility S = Sewer E = Easement R = Pier
 ROW = RIGHT OF WAY (IS NOTED)
 CENTERLINE (IS NOTED)
 BUILDING SERVICE LINE (BSL)
 EASEMENT
 REAL ESTATE LINES (IS NOTED)
 SURVEY REAL ESTATE SURVEY LINE (IS NOTED)



SYMBOL LEGEND

- X Out "X"
- Monument Found
- 5/8" Steel Rebar with yellow plastic cap scribbled
- SEA GROUP FIRM #0091 set flush with grade

Property Address:

4317 Sedge Ct.,
 Zionsville, IN

Project Number: R17-2897

Page Number 1 of 2

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 06-08-27-000-006.049-006

LOT NO. 197 IN THE PRESERVE AT SPRING KNOLL, SECTION 2, AS PER PALT THEREOF RECORDED IN PLAT RECORD 12, PAGE 58-61 AS INSTRUMENT NO. 0115120 IN THE RECORDER'S OFFICE, BOONE COUNTY, INDIANA.

DEED RECORDED : 07/13/2017

INSTRUMENT # : 2017006579.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Chicago Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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